

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

STEPHEN KING, derivatively on behalf of ACER  
THERAPEUTICS INC.,

Plaintiff,

-against-

CHRIS SCHELLING, HARRY PALMIN,  
JASON AMELLO, STEVE ASELAJE,  
HUBERT BIRNER, JOHN M. DUNN,  
MICHELLE GRIFFIN, and LUC MARENBERE,

Defendants,

and

ACER THERAPEUTICS INC.,

Nominal Defendant.

**MEMORANDUM ENDORSED**

Case No. 1:20-cv-4779

**STIPULATION OF DISMISSAL**

WHEREAS plaintiff Stephen King together with David Giroux, plaintiff in the derivative action in the District of Massachusetts captioned *Giroux v. Amello*, No. 1:20-cv-10537 (the “Massachusetts Action”), Matthew Gress, Kyle McNeil, and Jose Luis Gonzalez Diaz, plaintiffs in the consolidated derivative action in the District of Delaware captioned *In re Acer Therapeutics Inc. Derivative Litigation*, Lead Case No. 1:19-cv-01505-MN (the “Delaware Action”),<sup>1</sup> and defendants Chris Schelling, Harry Palmin, Jason Amello, Steve Aselage, Hubert Birner, John M. Dunn, Michelle Griffin, and Luc Marengere, and nominal defendant Acer Therapeutics Inc. (“Acer”) entered into a Stipulation of Settlement, dated December 29, 2020 (the “Settlement”).

WHEREAS on January 21, 2021, the parties made an application in the Massachusetts Action, pursuant to Federal Rule of Civil Procedure 23.1, for an order preliminarily approving

<sup>1</sup> This action, the Massachusetts Action, and Delaware Action are collectively referred to as the “Derivative Actions.”

the proposed Settlement and form and content of the Notice to Current Acer Shareholders of Pendency and Proposed Settlement of Shareholder Actions (“Notice”).

WHEREAS the District of Massachusetts issued the Preliminary Approval and Scheduling Order on March 12, 2021.

WHEREAS on March 20, 2021 plaintiffs’ counsel published the Notice on their websites and on March 25, 2021 Acer published the Notice via a generally recognized wire service, filed a Current Report on Form 8-K with the SEC attaching the Notice and Settlement, and posted the Notice and Settlement on its website.

WHEREAS there were no objections to the Settlement.

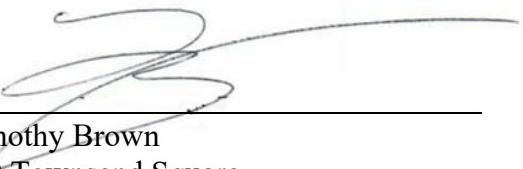
WHEREAS the parties attended the final Settlement hearing on May 12, 2021.

WHEREAS on May 13, 2021, the District of Massachusetts entered the Order and Final Judgment: (i) approving the Settlement as fair, reasonable and adequate, (ii) holding the Notice was given in accordance with the Preliminary Approval and Scheduling Order and that such Notice was reasonable, constituted with the most practicable notice under the circumstances to current Acer stockholders, complied with the requirements of federal law and due process, and constituted due and sufficient notice of the matters therein, (iii) approving plaintiffs’ counsel’s fee and expense award and plaintiffs’ incentive awards, and (iv) dismissing the Derivative Actions with prejudice and without costs, except as otherwise provided.

IT IS HEREBY STIPULATED AND AGREED that the above-captioned action is dismissed with prejudice as to defendants Chris Schelling, Harry Palmin, Jason Amello, Steve Aselage, Hubert Birner, John M. Dunn, Michelle Griffin, and Luc Marengere, and nominal defendant Acer.

Dated: New York, New York  
May 19, 2021

**THE BROWN LAW FIRM, P.C.**

  
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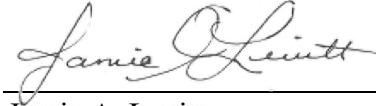
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*Attorneys for Plaintiff Stephen King*

SO ORDERED.

Dated: May 21, 2021  
New York, New York

**MORRISON & FOERSTER LLP**

  
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*Attorneys for Nominal Defendant Acer Therapeutics Inc. and Defendants Chris Schelling, Harry Palmin, Jason Amello, Steve Aselage, Hubert Birner, John M. Dunn, Michelle Griffin, and Luc Marengere*

  
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GREGORY H. WOODS  
United States District Judge